

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

ELDON HUFFINE,)	Cause No. CV 08-14-BU-SEH-RKS
)	
Petitioner,)	
)	
vs.)	FINDINGS AND RECOMMENDATION
)	OF U.S. MAGISTRATE JUDGE
GALLATIN COUNTY SHERIFF)	
JAMES CASHELL,)	
)	
Respondent.)	
_____)	

On March 4, 2008, Petitioner Eldon Huffine filed this action seeking a writ of habeas corpus. The Court has jurisdiction under 28 U.S.C. § 2241. On April 3, 2008, Petitioner moved to proceed in forma pauperis. Petitioner is a prisoner proceeding pro se.

For several reasons, the Court will recommend that forma pauperis status be denied. First, despite an instruction to name “all Defendants/Respondents,” Petitioner’s motion lists as Defendants “all Defendants in suits named Toba Lord, et al, etc.” See Mot. (doc. 3) at 1. The Clerk’s Office filled in the instant case number. It is not clear in which of his numerous actions Petitioner intended this motion to be filed.

Second, in response to the question “Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other thing of value?” Petitioner wrote “all held in

Huffine family trust for my heirs and assigns.” Mot. (doc. 3) at 2. Petitioner is not telling the whole story. A Presentence Report prepared in the case of United States v. Huffine, No. CR 05-19-BU-DWM (D. Mont. filed Aug. 19, 2005), indicates that, during a home visit, he was found to have several firearms and various vehicles and that he receives rental income of \$2,000.00 per year from a home that he rents to a friend. While he has, in the past, claimed to have debts of up to \$290,000.00, see Mot. to Proceed In Forma Pauperis (doc. 2) at 4, Huffine v. Seidlitz, No. CV 06-54-H-DWM-RKS (D. Mont. filed Oct. 31, 2006), no outstanding credit card debt at all appeared on his credit record. The public records portion of his credit report shows debts totaling less than \$16,000.00. See Presentence Report ¶¶ 48, 55-56.

The Court concludes that Petitioner is not a trustworthy affiant. Moreover, if it is true that he has no access to his assets, that could only be the result of his own actions over the past several months. He should not be permitted to proceed in forma pauperis.

Pursuant to Minetti v. Port of Seattle, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam), Petitioner is not entitled to a ten-day period to object to the Findings and Recommendation.

Based on the foregoing, the Court enters the following:

RECOMMENDATION

1. The Motion to Proceed In Forma Pauperis should be DENIED.
2. Petitioner should be given ten (10) working days from the date of the Order denying his motion to pay the full filing fee of \$5.00.
3. The action should be deemed dismissed if Petitioner fails to timely pay the filing fee and the District Court should direct the Clerk of Court to close the case if Petitioner fails to pay the full

filing fee within that time.

The Clerk of Court shall immediately forward a copy of the Findings and Recommendation to Huffine and to United States District Judge Sam E. Haddon for his immediate review.

DATED this 7th day of April, 2008.

/s/ Keith Strong
Keith Strong
United States Magistrate Judge